

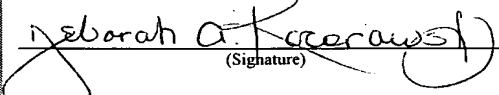
09-29-05

B 1723

Atty. Dkt. No. 061300-0242

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: O'Connell, et al.
Title: ENVIRONMENTAL SHIELD
FOR A TRUCK MOUNTED
CONCRETE MIXER
Appl. No.: 09/954,677
Filing Date: 09/15/2001
Examiner: Cooley, Charles E.
Art Unit: 1723

CERTIFICATE OF EXPRESS MAILING	
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
EV 593167565 US (Express Mail Label Number)	September 28, 2005 (Date of Deposit)
Deborah A. Kocorowski (Printed Name)	
 (Signature)	

TRANSMITTAL

Mail Stop **PATENT EXT.**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Transmitted herewith please find the following documents for the above-identified patent application.

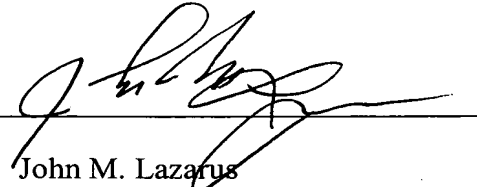
- ☒ Request For Reconsideration Of Application For Reconsideration Of Patent Term Adjustment Under 37 C.F.R. § 1.705(b) (5 pages).
- ☒ Exhibit A (3 pages).
- ☒ Exhibit B (6 pages).
- ☒ Exhibit C (2 pages).
- ☒ Exhibit D (3 pages).

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.18, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447.

Please direct all correspondence to the undersigned attorney or agent at the address indicated below.

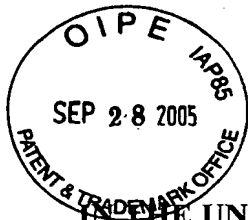
Respectfully submitted,

Date SEPTEMBER 28, 2005 By



FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5591
Facsimile: (414) 297-4900

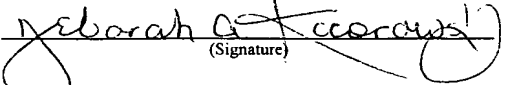
John M. Lazarus
Attorney for the Applicants
Registration No. 48,367



Atty. Dkt. No. 061300-0242

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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EV 593167565 US (Express Mail Label Number)	September 28, 2005 (Date of Deposit)
Deborah A. Kocorowski (Printed Name)	
 (Signature)	

REQUEST FOR RECONSIDERATION OF
APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Mail Stop **PATENT EXT.**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

The Applicants hereby request reconsideration of the Decision On Application For Patent Term Adjustment dated September 1, 2005 (copy provided as Exhibit A), which dismissed the Applicants' Application For Reconsideration of Patent Term Adjustment for the above-identified patent application (copy provided as Exhibit B).

Background

(1) The Applicants have previously paid the fee of \$200.00 as set forth in 37 C.F.R. § 1.18(e) in the Applicants original Application For Reconsideration of Patent Term Adjustment, which was filed with the Issue Fee on June 30, 2005.

(2) The Applicants were issued a Notice of Allowance (NOA) on March 30, 2005, which indicated that the Patent Term Adjustment (PTA) for the above-identified patent application is 0 day(s). According to the Patent Application Information Retrieval (PAIR)

System, the prosecution history of the above-identified patent application includes a 643 day USPTO delay and an 835 day Applicant delay (a copy of the PAIR PTA determination is provided as Exhibit C). Applicants had requested reconsideration of the PTA for the following reasons:

(i) The Applicants believe that the correct PTA for the above-identified patent application is 643 days.

(ii) PTA Determination

(a) USPTO Delays

The PAIR System indicates that a 643 day USPTO delay exists for the time period from the date 14 months after filing of the application (i.e. November 15, 2002) to the date the non-final Office action was mailed (i.e. August 19, 2004).

(b) Applicant Delay

The PAIR System indicates an Applicant delay of 835 days.

The USPTO issued a Notice of Abandonment (in error) on November 10, 2003. The Applicants timely responded to the Notice of Abandonment by filing a Petition to Revive on January 9, 2004. The Petition was granted on April 30, 2004.

The USPTO issued a Withdrawal of Previously Sent Notice on July 29, 2004, indicating that the Notice of Abandonment mailed on November 10, 2003, was sent in error.¹ The delay assessed to the Applicants is entirely attributable to the period of time associated with rectifying the erroneous Notice of Abandonment received from the Office.

(c) PTA Calculation

¹ The Applicants have included a copy as Exhibit D.

As such, the Applicants contend that the USPTO delay is 643 days and that the Applicant delay is 0 days. Therefore, the above-identified patent application is entitled to a 643 day PTA.

(iii) Terminal Disclaimer

The above-identified patent application is not subject to a terminal disclaimer.

(iv) Circumstances That Constitute a Failure to Engage in Reasonable Efforts to Conclude Processing or Examination

The Applicants believe that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in 37 C.F.R. § 1.704.

The Decision On Application For Patent Term Adjustment

A Decision On Application For Patent Term Adjustment mailed on September 1, 2005 states that the “application for patent term adjustment is DISMISSED”.

The Decision also states:

A review of the record reveals that Applicants were properly assessed applicant delay pursuant to 37 C.F.R. § 1.704(c)(3). A Notice to File Missing Parts was mailed on October 16, 2001. Applicants failed to timely reply. Accordingly, the application became abandoned on December 17, 2001. A petition to revive was first filed on January 9, 2004, and was finally granted in a decision mailed on April 30, 2004.

Applicants state that the Office mailed a Withdrawal of Previously Sent Notice on July 29, 2004, indicating that the Notice of Abandonment mailed on November 10, 2003 was mailed in error. However, a review of the application file fails to reveal the presence of that paper. The application file is the official file of record. An applicant alleging the presence of a paper not contained therein bears the weight of that allegation by a preponderance of the evidence. (Emphasis added).

Request for Reconsideration

The Applicants respectfully submit this Request for Reconsideration before the November 1, 2005 deadline.

The Applicants submit herewith as Exhibit D a copy of the Withdrawal of Previously Sent Notice mailed by the Office on July 29, 2004 and received by the Applicants on August 2, 2004, which states "The Notice of Abandonment mailed in 11/10/2003 was sent in error and is hereby withdrawn. A Filing Receipt is enclosed. The Office regrets any inconvenience the error may have caused."

The Applicants respectfully submit that the entire delay assessed to the Applicant for the period from December 17, 2001 (the date the application became abandoned) to April 30, 2004 (the date of mailing of the decision reviving the application) of 865 days² was not due to any delay or failure to engage in reasonable efforts to conclude prosecution by the Applicants. In fact, the Applicants respectfully submit that the entire delay of 865 days was due to the Notice of Abandonment, acknowledged to have been sent in error by the Office, and that the Applicants acted diligently to rectify the erroneous Notice of Abandonment.

Accordingly, the Applicants request reconsideration of the Decision On Application For Patent Term Adjustment mailed on September 1, 2005, and that the Application For Patent Term Adjustment of 643 days filed on June 24, 2005 be granted.

Should any questions arise with regard to this Request for Reconsideration, please contact the undersigned.

² The Applicants direct the Office's attention to PAIR which indicates a period of 835 days and is believed to be incorrect.

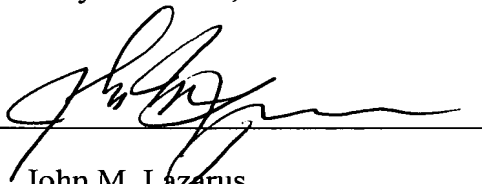
The Applicants believe that no fee is required for this Request For Reconsideration. However, in the event that a fee is required, the Commissioner is hereby authorized to charge any fees which may be required regarding this Request to Deposit Account No. 06-1447.

Respectfully submitted,

Date SEPTEMBER 28, 2005

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5591
Facsimile: (414) 297-4900

By



John M. Lazarus
Attorney for the Applicants
Registration No. 48,367



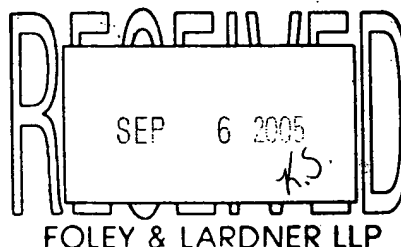
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FOLEY & LARDNER LLP
777 EAST WISCONSIN AVE
SUITE 3800
MILWAUKEE WI 53202-5308



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OFFICE OF PETITIONS

In re
O'Connell, et al.
Application No. 09/954,677
Filed: September 15, 2001
Attorney Docket No. 061300-0242

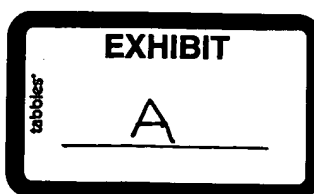
: DECISION ON APPLICATION
: FOR PATENT TERM ADJUSTMENT
:
:

(REQ. FOR RECONSIDERATION)
RESPONSE DUE 11/1/05

This letter is in response to the "APPLICATION FOR
RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R.
~~§ 1.705(b)~~", filed June 24, 2005. Applicants request that the
initial determination of patent term adjustment under 35 U.S.C.
154(b) be corrected from zero (0) days to six hundred forty-three
(643) days.

The application for patent term adjustment is DISMISSED.

On March 30, 2005, the Office mailed the Determination of Patent
Term Adjustment under 35 U.S.C. 154(b) in the above identified
application. The Notice stated that the patent term adjustment
(PTA) to date is zero (0) days. On June 24, 2005, Applicants



K.S.
9/7/05
NM
9/7/05
5-2-05

timely¹ submitted an application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is six hundred forty-three (643) days.

The Office initially determined a patent term adjustment of zero (0) days based on an adjustment for PTO delay of six hundred forty-three (643) days, pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. §1.703(a)(1), reduced by eight hundred thirty-five (835) days of Applicant delay pursuant to 37 C.F.R. § 1.704(c)(3).

A review of the record reveals that Applicants were properly assessed applicant delay pursuant to 37 C.F.R. § 1.704(c)(3). A Notice to File Missing Parts was mailed on October 16, 2001. Applicants failed to timely reply. Accordingly, the application became abandoned on December 17, 2001. A petition to revive was first filed on January 9, 2004, and was finally granted in a decision mailed on April 30, 2004.

Applicants state that the Office mailed a Withdrawal of Previously Sent Notice on July 29, 2004, indicating that the Notice of Abandonment mailed on November 10, 2003 was mailed in error. However, a review of the application file fails to reveal the presence of that paper. The application file is the official file of record. An applicant alleging the presence of a paper not contained therein bears the weight of that allegation by a preponderance of the evidence.

37 C.F.R. § 1.704(c)(3) states:

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(3) Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in §1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the date the issue fee was due and ending on the earlier of:

¹ Applicant filed the application for patent term adjustment on the same date as the issue fee.

(i) The date of mailing of the decision reviving the application or accepting late payment of the issue fee; or

(ii) The date that is four months after the date the grantable petition to revive the application or accept late payment of the issue fee was filed; (emphasis added)

Therefore, Applicant should have been assessed delay for the period from December 17, 2001 (the date the application became abandoned) to April 30, 2004 (the date of mailing of the decision reviving the application), or 865 days, not 835 days.

In view thereof, the correct determination of patent term adjustment is **zero (0) days** (643 days of PTO delay, reduced by 865 days of applicant delay).

Receipt of the \$200 fee under 37 C.F.R. § 1.18(e) is acknowledged.

The application file is being forwarded to the Office of Patent Publication for timely issuance of the patent.

Telephone inquiries specific to this letter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

Karin Ferriter
for

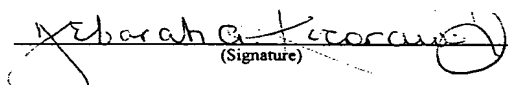
Karin Ferriter
Senior Legal Advisor
Office of Patent Legal Administration
Office of Deputy Commissioner
for Patent Examination Policy



Atty. Dkt. No. 061300-0242

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: O'Connell, et al.
Title: ENVIRONMENTAL SHIELD
FOR A TRUCK MOUNTED
CONCRETE MIXER
Appl. No.: 09/954,677
Filing Date: 09/15/2001
Examiner: Cooley, Charles E.
Art Unit: 1723

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EV 633080847 US (Express Mail Label Number)	June 24, 2005 (Date of Deposit)
Deborah A. Kocorowski (Printed Name)	
 (Signature)	

APPLICATION FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

Mail Stop **PATENT EXT.**
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Applicants hereby request reconsideration of the Patent Term Adjustment for the above-identified patent application.

- (1) Applicants have included the fee of \$200.00 as set forth in 37 C.F.R. § 1.18(e).
- (2) Applicants were issued a Notice of Allowance (NOA) on March 30, 2005, which indicated that the Patent Term Adjustment (PTA) for the above-identified patent application is 0 day(s). According to the Patent Application Information Retrieval (PAIR) System, the prosecution history of the above-identified patent application includes a 643 day USPTO delay and a 0 day Applicant delay (copy of PAIR PTA determination included herewith). Applicants request reconsideration of the PTA for the following reasons:



(i) Applicants believe that the correct PTA for the above-identified patent application is 643 days.

(ii) PTA Determination

(a) USPTO Delays

The PAIR System indicates that a 643-day USPTO delay is attributable to an erroneous Notice of Abandonment issued by the USPTO as described below and in the Declaration attached hereto.

(b) Applicant Delay

The PAIR System indicates an Applicant delay of 0 days.

The USPTO issued a Notice of Abandonment in error on November 10, 2003.

Applicants timely responded to the Notice of Abandonment by filing a Petition to Revive on January 9, 2004. The Petition was granted on April 30, 2004.

The USPTO issued a Withdrawal of Previously Sent Notice on July 29, 2004, indicating that the Notice of Abandonment mailed on November 10, 2003, was sent in error.

(c) PTA Calculation

As such, Applicants contend that the USPTO delay is 643 days and that the Applicant delay is 0 days. Therefore, the above-identified patent application is entitled to a 643 day PTA.

(iii) Terminal Disclaimer

The above-identified patent application is not subject to a terminal disclaimer.

(iv) Circumstances That Constitute a Failure to Engage in Reasonable Efforts to Conclude Processing or Examination

Applicants believe that there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified patent application as set forth in 37 C.F.R. § 1.704.

Should any questions arise with regard to this Application for Reconsideration of Patent Term Adjustment, please contact the undersigned.

Respectfully submitted,

Date 06-24-05

FOLEY & LARDNER LLP
Customer Number: 26371
Telephone: (414) 297-5776
Facsimile: (414) 297-4900

By



James A. Wilke
Attorney for Applicants
Registration No. 34,279

CLOSE WINDOW

ALL CASES SELECT CASE ACCOUNTS

Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number: 061300-0242
Application Number: 09/954677
Patent Number: N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	09/15/2001	0		
	14 month From Application date	11/15/2002	426		
Edit Delete	Notice of Abandonment	11/10/2003	786		
Edit Delete	Petition to Revive Received at PTO	01/09/2004	846		
Edit Delete	Petition to Revive Received at PTO	04/15/2004	943		
Edit Delete	Petition to Revive App. Accepted	04/30/2004	958		
Edit Delete	Non-Final Office Action	08/19/2004	1,069		
Edit Delete	Non-Final Office Action Response Received at PTO	11/15/2004	1,157		
Edit Delete	Non-Final Office Action	12/21/2004	1,193		
Edit Delete	Non-Final Office Action Response Received at PTO	02/16/2005	1,250		
Edit Delete	Notice of Allowance	03/30/2005	1,292		
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			PTA:	643	

643

first office action

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FOLEY

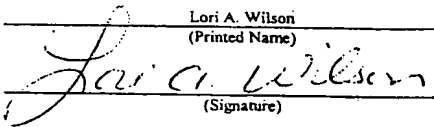
LOGIN: Andrew Mitchell

IP: 10.50.33.48

Foley & Lardner LLP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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Appl. No.: 09/954,677
Filing Date: 09/15/2001
Examiner:
Art Unit:

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EL 979073001 US (Express Mail Label Number)	1/9/04 (Date of Deposit)
Lori A. Wilke (Printed Name)	
 (Signature)	

DECLARATION OF JAMES A. WILKE UNDER 37 C.F.R 1.137

I, James A. Wilke declare:

1. I am an adult resident of the State of Wisconsin.
2. I am, and at all relevant times, an attorney for Oshkosh Truck Corporation, Oshkosh Wisconsin (OTC).
3. I filed a patent application now identified with Serial No. 09/954,677, a copy of a postcard bearing a U.S. Patent Office bar code sticker with the above serial number is attached hereto and incorporated herein by reference.
4. Prior to receipt of the Notice of Abandonment mailed November 10, 2003 and received in our Milwaukee Office on November 13, 2003, no communication from the U.S. Patent Office was received by the undersigned.
5. Upon information and belief, a Notice to File Missing Parts for Serial Number 09/954,677, was not received by our docketing department which receives and docketed all correspondence from the U.S. Patent Office. A document dated November 13, 2003, entitled FL_USPTO Form, bearing a Serial Number of 09/654,677 (a copy of which is attached hereto) shows a misstatement of the serial number for our docket number.
6. The undersigned believes that the misstatement of numbers in the Serial Number caused the failure to reply to the Notice of Missing Parts. The undersigned believes

that the U.S. Patent Office mailed the Notice of Missing Parts to a correspondence address for serial number 09/654,677.

7. The undersigned conducted a telephone conversation with Mr. Preston Wallace of the U.S. Patent Office, on November 13, 2003 to explain and discuss this matter. Mr. Wallace suggested that a Petition to Revive be filed.

8. This declaration accompanies a copy of the Notice of Abandonment, the requisite revival fee, (\$1,330.00) a copy of the declaration and power of attorney of inventor Michael B. Cahoun, and the filing fee for the application (\$840.00).

9. I have been informed by a representative of Oshkosh Truck Corporation that named inventor, Jack Harowitz, after a diligent attempt to contact him, is not available at this time and that named inventor William J. O'Connell is refusing to sign any documents at this time. Neither of such inventors are employees of Oshkosh Truck Corporation.

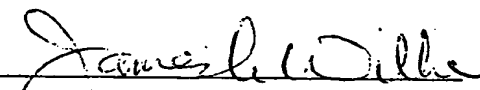
10. I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. I make the statements set forth above of my own personal knowledge, and, if called upon to do so, could testify competently thereto. I acknowledge that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. §1001) and may jeopardize the validity of the patent application and any corresponding patent.

Respectfully submitted,

Date 01-09-04

FOLEY & LARDNER
777 East Wisconsin Avenue, Suite 3800
Milwaukee, Wisconsin 53202-5306
Telephone: (414) 297-5776
Facsimile: (414) 297-4900

By



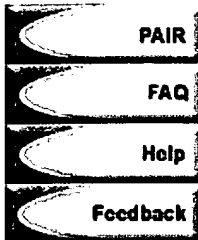
James A. Wilke
Attorney for Applicant
Registration No. 34,279



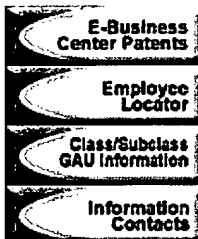
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PATENT APPLICATION INFORMATION RETRIEVAL



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**Patent Term Adjustment (PTA) for application number:
09/954,677**

			Days
Filing or 371(c) Date:	09-15-2001	USPTO Delay (PTO):	643
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL):	835
Post-Issue Petitions (days):	+0	Total PTA:	0
USPTO Adjustment (days):	--30	Explanation of Calculations	

Select Search Option

Patent Term Adjustment History

Date	Contents Description	PTO (days)	APPL (days)
08-31-2005	Adjustment of PTA Calculation by PTO		
03-30-2005	Mail Notice of Allowance		
03-30-2005	Mail Formal Drawings Required		
03-21-2005	Issue Revision Completed		
03-21-2005	Formal Drawings Required		
03-21-2005	Notice of Allowance Data Verification Completed		
02-16-2005	Substitute Specification Filed		
03-13-2005	Date Forwarded to Examiner		
02-16-2005	Response after Ex Parte Quayle Action		
02-16-2005	Workflow incoming amendment IFW		
12-21-2004	Mail Ex Parte Quayle Action (PTOL - 326)		
12-20-2004	Ex Parte Quayle Action		
11-30-2004	Date Forwarded to Examiner		
11-15-2004	Response after Non-Final Action		
11-15-2004	Workflow incoming amendment IFW		
08-19-2004	Mail Non-Final Rejection	643	
08-18-2004	Non-Final Rejection	↑	
08-11-2004	Case Docketed to Examiner in GAU	↑	
07-28-2004	Application Dispatched from OIPE	↑	
07-29-2004	Application Is Now Complete	↑	
04-30-2004	Payment of additional filing fee/Preexam	↑	835
	A statement by one or more inventors satisfying		

EXHIBIT

C

04-30-2004	the requirement under 35 USC 115, Oath of the Applic	↑	↑
11-10-2003	Withdraw Pre-Exam Abandon	↑	↑
04-30-2004	Petition to Revive Application - Granted	↑	↑
04-15-2004	Petition Entered	↑	↑
04-30-2004	Petition Decision - Granted	↑	↑
04-15-2004	Petition Entered	↑	↑
04-15-2004	Workflow incoming petition IFW	↑	↑
04-01-2004	Petition Decision - Dismissed	↑	↑
03-16-2004	Petition Entered	↑	↑
01-27-2004	Petition Decision - Dismissed	↑	↑
01-09-2004	Petition Entered	↑	↑
12-17-2001	Abandonment -- During Preexam Processing	↑	↑
10-16-2001	Notice Mailed--Application Incomplete--Filing Date Assigned	↑	↑
10-16-2001	Correspondence Address Change	↑	
10-15-2001	Correspondence Address Change	↑	
09-24-2001	IFW Scan & PACR Auto Security Review	↑	
09-15-2001	Initial Exam Team nn	↑	

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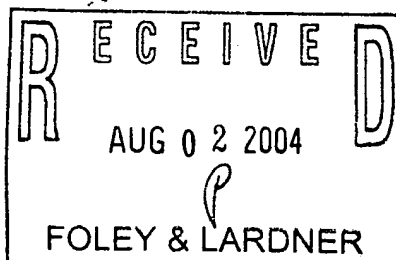
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JFM/JAWI

APPLICATION NUMBER	FILING OR 371(c) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
09/954,677		William J. O'Connell	061300-0242

James A. Wilke
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CONFIRMATION NO. 8436

WITHDRAWAL NOTICE



OC000000013373193

Date Mailed: 07/29/2004

WITHDRAWAL OF PREVIOUSLY SENT NOTICE

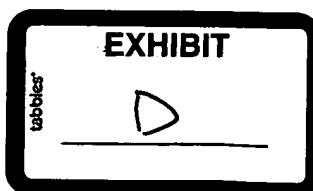
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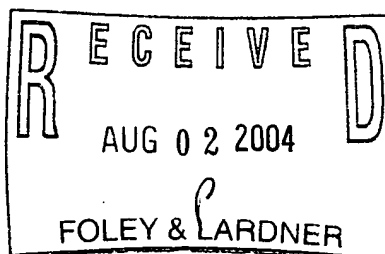


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APPL NO.	FILING OR 371 (c) DATE	ART UNIT	FIL FEE REC'D	ATTY. DOCKET NO	DRAWINGS	TOT CLMS	IND CLMS
09/954,677	09/15/2001	1723	770	061300-0242	4	20	3

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CONFIRMATION NO. 8436

UPDATED FILING RECEIPT



OC000000013373199

Date Mailed: 07/29/2004

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Applicant(s)

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Jack Harowitz, Mesa, AZ;

Domestic Priority data as claimed by applicant

Foreign Applications

If Required, Foreign Filing License Granted: 10/15/2001

Projected Publication Date: Request for Non-Publication Acknowledged

Non-Publication Request: Yes

Early Publication Request: No

Title

Environmental shield for a truck mounted concrete mixer

Preliminary Class

MM
8/2/04

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